

**BEFORE THE SUPREME COURT CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

FILING DETAILS

Case No: 002/19-09-2007-ECCC/SC **Party Filing:** Co-Prosecutors
Filed to: Supreme Court Chamber **Original Language:** English

Date of document: 11 April 2019

CLASSIFICATION

**Classification of the document
suggested by the filing party:** PUBLIC



Classification by Supreme Court Chamber: សាធារណៈ/Public

Classification Status:

Review of Interim Classification:

Records Officer Name:

Signature:

**CO-PROSECUTORS' RESPONSE TO DEFENCE REQUESTS FOR ADDITIONAL
TIME AND PAGE LIMITS FOR NOTICE OF APPEAL**

Filed by:

Co-Prosecutors
CHEA Leang
Nicholas KOUMJIAN

Distributed to:

Supreme Court Chamber
Judge KONG Srim, President
Judge Phillip RAPOZA
Judge SOM Sereyvuth
Judge C. N. JAYASINGHE
Judge MONG Monichariya
Judge YA Narin
Judge Florence Ndepele MUMBA

Copied to:

Accused
NUON Chea
KHIEU Samphan

Lawyers for the Defence
SON Arun
Doreen CHEN
KONG Sam Onn
Anta GUISSÉ

Civil Party Lead Co-Lawyers
PICH Ang
Marie GUIRAUD

I. INTRODUCTION

1. The Co-Prosecutors oppose the lengthy extensions of time and page limits requested by Nuon Chea and Khieu Samphan.¹ The proposed extensions are unwarranted in the circumstances and would result in an unnecessary delay in the proceedings.
2. The Co-Prosecutors submit that an extension of 45 days, and therefore 75 days in total, is reasonable and that the existing page limit of 30 pages is sufficient for the notice of appeal.

II. PROCEDURAL HISTORY

3. The Case 002/02 Trial Judgment was issued in summary form on 16 November 2018.² Therein, the Trial Chamber set out its legal findings on the CPK policies and the charged crimes relating to cooperatives and worksites; security centres and execution sites; the targeting of the Cham, the Vietnamese, Buddhists, and former Khmer Republic officials; and the regulation of marriage. The Trial Chamber indicated which crimes it had found proven beyond reasonable doubt and those for which it had entered acquittals.³ The Trial Chamber also explained the modes of liability under which Nuon Chea and Khieu Samphan were found responsible and those it had not considered proven to the requisite standard.⁴
4. On 28 March 2019, the Trial Chamber provided its full reasoned judgment.⁵
5. On 3 April 2019, Nuon Chea filed his request for 150 additional days (180 in total) and 70 extra pages (100 in total) to file his notice of appeal,⁶ indicating that this was only his first request for time and page extensions for the notice of appeal.⁷ On the same day, Khieu Samphan requested a total of 240 days to file his notice of appeal and 100 pages in French to do so.⁸

¹ **F39/1.1** Demande de la Défense de KHIEU Samphân aux fins d'extension du délai et du nombre de pages de sa déclaration d'appel, 3 April 2019 ("Khieu Samphan Request"); **F40/1.1** Nuon Chea's Urgent First Request for an Extension of Time and Page Limits for Filing his Notice of Appeal Against the Trial Judgment in Case 002/02, 3 April 2019 ("Nuon Chea Request").

² Case 002/02 Summary of Trial Judgement, 16 November 2018 ("Trial Judgment Summary").

³ Trial Judgment Summary, pp. 5-19, 29-31.

⁴ Trial Judgment Summary, pp. 19-27.

⁵ **E465** Case 002/02 Trial Judgement, 16 November 2018.

⁶ **F40/1.1** Nuon Chea Request, para. 1.

⁷ **F40/1.1** Nuon Chea Request, para. 35.

⁸ **F39/1.1** Khieu Samphan Request, para. 42.

III. RESPONSE

(i) *Size, Complexity, and Novelty of the Case 002/02 Trial Judgment*

6. The Co-Prosecutors acknowledge that the Defence are correct in pointing out that the Case 002/02 trial judgment is long and complex and deals with novel legal issues. However, the Co-Prosecutors submit that while these factors should be considered, they do not justify extensions of the extraordinary length requested by the Defence.
7. For example, Nuon Chea points to the size of the Case 002/02 trial judgment, suggesting that “if the number of pages in a judgement are considered as the most important measure of the length of time needed for the preparation of a notice of appeal”, the length of time the Defence should be granted is 190 days.⁹ However, other international trials relied on by Nuon Chea demonstrate that such a calculation is unsupported by practice. For example: the *Karadžić* trial judgment was 2,615 pages and he received a 90-day extension (120 days in total);¹⁰ the *Mladić* trial judgment was 2,477 pages and he also received a 90-day extension (120 days in total);¹¹ and the *Taylor* trial judgment was 2,478 pages and he received a 71-day extension (85 days in total).¹² Each of these judgments was longer than the Case 002/2 Trial Judgment and only involved a single accused.
8. Nuon Chea and Khieu Samphan’s reliance on the ECCC’s completion plan and the Trial Chamber’s reasoning for the length of time taken to issue the judgment is selective.¹³ Both requests omit the Trial Chamber’s reference to staffing and translation issues – which have nothing to do with the size of the case file – when explaining the projection of time required to issue the judgment.¹⁴

⁹ **F40/1.1** Nuon Chea Request, para. 43.

¹⁰ *Prosecutor v Karadžić*, IT-95-5/18-T, Judgement, 24 March 2016; *Prosecutor v Karadžić*, MICT-13-55-A, Decision on Motion for Extension of Time to File Notice of Appeal, 21 April 2016, p. 2 (“*Karadžić* First Decision on Extension”); *Prosecutor v Karadžić*, MICT-13-55-A, Decision on a Motion for a Further Extension of Time to File a Notice of Appeal, 15 June 2016, p. 3-4 (“*Karadžić* Second Decision on Extension”).

¹¹ *Prosecutor v Mladić*, IT-09-92-T, Judgment, 22 November 2017; *Prosecutor v Mladić*, MICT-13-56-A, Decision on Motion for Extension of Time to File Notice of Appeal, 21 December 2017, p. 2 (“*Mladić* Decision on Extension”).

¹² *Prosecutor v Taylor*, SCSL-03-01-T, Judgement, 26 April 2012; *Prosecutor v Taylor*, SCSL-03-01-A, Decision on Defence Motion for Extension of Time to File Notice of Appeal, 20 June 2012, p. 2-3 (“*Taylor* Decision on Extension”).

¹³ **F40/1.1** Nuon Chea Request, para. 39; **F39/1.1** Khieu Samphan Request, para. 23.

¹⁴ Extraordinary Chambers in the Courts of Cambodia Completion Plan (rev. 17), 30 June 2018, paras 32-33.

(ii) The Claimed Lack of Defence Resources

9. Between approximately the filing of the Parties' amended final trial briefs in September 2017 and the judgment summary in November 2018, Nuon Chea's team consisted of two counsel and four part-time consultants,¹⁵ and Khieu Samphan's team had two counsel and two consultants.¹⁶ Each Defence team thus had more than one year to identify any evidential or procedural matters that it deemed problematic and relevant to a possible appeal that could serve as a reference point against the Trial Chamber's ultimate decisions. Indeed, Nuon Chea states that he has already "identified at least 56 [written or oral decisions] which may give rise to appealable errors",¹⁷ while Khieu Samphan has noted that there were more than 295 written decisions, excluding oral decisions, during the Case 002/02 trial.¹⁸ Clearly, both Nuon Chea and Khieu Samphan have had ample time to identify and analyse any decisions they may want to appeal.¹⁹
10. Additionally, despite Nuon Chea's effort to downplay the contents and significance of the judgment summary issued in November 2018 by referring to it as "informal[]",²⁰ the summary allowed all parties to commence appellate preparation by pinpointing the parts of their case theory which had not been accepted.²¹
11. Since the release of the judgment summary, Nuon Chea's team (as of latest 1 March 2019) has encompassed two counsel, a senior evidence analyst and six full- and part-time consultants,²² while Khieu Samphan's team (as of latest 1 December 2018) has been comprised of two counsel and five consultants.²³ Consequently, since prior to the issuance of the full reasoned trial judgment, the Nuon Chea defence team has had nine staff and Khieu Samphan's team has had seven staff.
12. Khieu Samphan has also requested from DSS a budget extension to have seven consultants, which would bring his team up to nine staff members.²⁴ This would restore the Khieu Samphan Defence to the same size as its trial team *after* it was given additional

¹⁵ **F40/1.1** Nuon Chea Request, para. 5.

¹⁶ **F39/1.1** Khieu Samphan Request, para. 28.

¹⁷ **F40/1.1** Nuon Chea Request, para. 49.

¹⁸ **F39/1.1** Khieu Samphan Request, para. 20 (table).

¹⁹ *See*, **F40/1.1** Nuon Chea Request, paras 48-49; **F39/1.1** Khieu Samphan Request, para. 23, for claims regarding the lack of interlocutory appeal from trial decisions.

²⁰ **F40/1.1** Nuon Chea Request, para. 3. *See also*, para. 4.

²¹ *Contra* **F40/1.1** Nuon Chea Request, para. 57.

²² **F40/1.1** Nuon Chea Request, paras 6-7.

²³ **F39/1.1** Khieu Samphan Request, para. 30.

²⁴ **F39/1.1** Khieu Samphan Request, para. 30.

funding to hire two consultants for disclosure review.²⁵ Khieu Samphan is thus seemingly planning for team resources commensurate with those at the very height of the trial, rather than a focused appeal.²⁶

13. By contrast, the Office of the Co-Prosecutors has fewer lawyers than it did at the time it filed its final trial brief and fewer lawyers working on the appeal than the Nuon Chea and Khieu Samphan Defence teams combined. This is despite the fact that the Co-Prosecutors will simultaneously have to work on the pre-trial appeals in Cases 003, 004, and 004/02 during the Case 002/02 appeal.

(iii) Comparison Between the Case 002/02 Trial Judgment and Other International Cases

14. Khieu Samphan asserts that comparisons with other international cases are of limited relevance, specifically given the different applicable law period of the ECCC and the nature of the severance in Case 002.²⁷ However, while these issues certainly make the ECCC *as a tribunal* novel compared to other international courts, it does not make the Case 002/02 appeal distinguishable from other large international cases. The reality is that after two trials and two appeals, the applicable law of the ECCC is, to a large extent, settled. Similarly, the issue of severance has been litigated and relitigated,²⁸ such that its significance as an issue in the context of the Case 002/02 appeal is minimal.
15. By contrast, Nuon Chea seeks support for his added time request on the basis that multi-accused cases from the ICTY and ICTR had smaller judgments than Case 002/02 – and therefore fewer pages of judgment relevant to each accused – and yet were still granted between 30 and 60 day extensions for the notice of appeal.²⁹ Following this logic, however, the single accused cases at the international level also relied upon by Nuon Chea – wherein all of the pages of the judgment necessarily relate to the accused – indicate that Nuon Chea and Khieu Samphan should receive less of an extension than that granted to *Mladić* (90 days),³⁰ *Karadžić* (90 days),³¹ or *Taylor* (71 days)³² – all of which were cases with longer judgments than Case 002/02.

²⁵ **F39/1.1** Khieu Samphan Request, para. 31, table.

²⁶ *See*, **F39/1.1** Khieu Samphan Request, para. 32.

²⁷ **F39/1.1** Khieu Samphan Request, para. 18.

²⁸ *See, e.g.*, **F36** Case 002/01 Appeal Judgment, 24 November 2016, paras 224, 228, 236, 908, fns 1, 560.

²⁹ **F40/1.1** Nuon Chea Request, paras 47, 45.

³⁰ *Mladić* Decision on Extension, p. 2.

³¹ *Karadžić* First Decision on Extension, p. 2; *Karadžić* Second Decision on Extension, p. 3-4.

³² *Taylor* Decision on Extension, p. 2-3.

(iv) The Requested Extension of Page Limits

16. Tellingly, while Nuon Chea relies on the Supreme Court Chamber's decision in Case 002/01 to extend the time for parties' notices of appeal based on the length of the trial judgment,³³ he omits that the Supreme Court Chamber did not extend the page limit. The Supreme Court Chamber held that the request for additional pages was unnecessary, as "[t]he notice of appeal is limited to specifying, or merely outlining, the alleged errors of law invalidating the decision and alleged errors of fact which occasioned a miscarriage of justice, and requires no arguments or authorities in support of each of the grounds."³⁴ Instead, Nuon Chea seeks support from Supreme Court Chamber decisions that extended the page limits for the *appeal briefs*, not the notice of appeal.³⁵
17. Further, while Nuon Chea relies on a comparison with cases from other international criminal tribunals in relation to an extension of the statutory time limits,³⁶ he omits that these cases do not support the lengthy extension of the page limit for the notice of appeal that he requests. Notices of appeal filed in cases he cites were, for example: 32 pages in *Mladić*;³⁷ 16 pages in *Karadžić*;³⁸ 22 pages in *Gvero* (part of *Popović et al.*);³⁹ 12 pages in *Pavković* (part of *Sainović et al.*);⁴⁰ and 56 pages in *Ntahobal* (part of *Nyiramasuhuko et al.*).⁴¹
18. Requirements of a notice of appeal at the ICTY and ICTR are similar to those at the ECCC, namely to "indicate the substance of the alleged errors and the relief sought."⁴² As the ICTY Appeals Chamber has stated, the notice of appeal need only contain the list of the grounds of appeal, clearly specifying the alleged error and identifying the challenged

³³ **F40/1.1** Nuon Chea Request, para. 37.

³⁴ **F3/3** Decision on Defence Motion for Extension of Time and Page Limits of Notices of Appeal and Appeal Briefs, 29 August 2014, para. 8.

³⁵ **F40/1.1** Nuon Chea Request, para. 37.

³⁶ **F40/1.1** Nuon Chea Request, para. 45.

³⁷ *Prosecutor v Mladić*, MICT-13-56-A, Notice of Appeal of Ratko Mladić, 22 March 2018.

³⁸ *Prosecutor v Karadžić*, MICT-13-55-A, Radovan Karadžić's Notice of Appeal, 22 July 2016.

³⁹ *Prosecutor v Popović et al.*, IT-05-88-A, Notice of Appeal on Behalf of Milan Gvero, 19 February 2013.

⁴⁰ *Prosecutor v Sainović et al.*, IT-05-87-A, General Pavković Submission of his Amended Notice of Appeal, 29 September 2009.

⁴¹ *Prosecutor v Nyiramasuhuko et al.*, ICTR-98-42-A, Second Amended Notice of Appeal of Arsène Shalom Ntahobali Pursuant to Article 24 of the Statute and Rule 108 of the Rules of Procedure and Evidence, 26 October 2012.

⁴² International Criminal Tribunal for the Former Yugoslavia, Rules of Procedure and Evidence (rev. 8 July 2015), rule 108, International Criminal Tribunal for Rwanda, Rules of Procedure and Evidence (rev. 13 May 2015), rule 108.

finding or ruling, but does not need to detail the arguments that will be used in support of the grounds of appeal.⁴³

19. Khieu Samphan's argument for additional pages cites nothing beyond the larger size of Case 002/02 compared to 002/01, with the Supreme Court Chamber having denied his request for additional pages in the latter.⁴⁴ Despite being in the process of reading the judgment and not having identified or counted the grounds he will raise,⁴⁵ Khieu Samphan nonetheless considers that 100 pages in French for his notice of appeal will be required – a total larger than the page limits for an *appeal brief* at other international courts.⁴⁶

(v) Other Considerations Relied upon in the Requests

20. Nuon Chea's assertion that his and Khieu Samphan's status as "the highest-ranking and most high-profile living members of the Communist Party of Kampuchea"⁴⁷ warrants additional time and space to prepare a notice of appeal should be rejected. Nuon Chea has long sought to diminish the part that he played in the CPK,⁴⁸ arguing in his final trial brief that his role was "low-profile."⁴⁹ To now seek to use the significance of his position to get extensions of court deadlines is opportunistic, at best. Moreover, his assertion that this case is "likely the last at the ECCC altogether"⁵⁰ is speculative and irrelevant to the present appeal.
21. Likewise, Khieu Samphan's suggestion that one month of his requested eight-month extension is to translate his notice of appeal should be disregarded.⁵¹ The necessity to translate submissions is not unique to Khieu Samphan. Every party must ensure that their filings are translated or seek authorisation from the relevant chamber to file in one language, with the other language to follow at the earliest opportunity.⁵²

⁴³ See, e.g., *Prosecutor v Hartmann*, IT-02-54-R77.5-A, Decision on Motions to Strike and Request to Exceed Word Limit, 6 November 2009, para. 14.

⁴⁴ **F39/1.1** Khieu Samphan Request, paras 37-41.

⁴⁵ **F39/1.1** Khieu Samphan Request, para. 39.

⁴⁶ See, e.g., International Criminal Court, Regulations of the Court, ICC-BD/01-05-16, regulation 58(5): "The document in support of the appeal shall not exceed 100 pages."; Special Court for Sierra Leone, Practice Direction on dealing with Documents in The Hague Sub-Office, article 6(E)(i): "The brief of an Appellant against a judgment or a sentence shall not exceed 100 pages or 30,000 words, whichever is greater."

⁴⁷ **F40/1.1** Nuon Chea Request, para. 28.

⁴⁸ **E313** Case 002/01 Trial Judgment, 7 August 2014, paras 264, 312, 321, 330, 342.

⁴⁹ **E457/6/3/1** Nuon Chea Amended Closing Brief, para. 1129.

⁵⁰ **F40/1.1** Nuon Chea Request, para. 28.

⁵¹ **F39/1.1** Khieu Samphan Request, paras 36, 42.

⁵² Extraordinary Chambers in the Courts of Cambodia, Practice Direction ECCC/01/2007/Rev.8, Filing of Documents Before the ECCC, article 7(1)-(2) ("ECCC Practice Direction on the Filing of Documents").



(vi) The Defence Requests Do Not Reflect the Purpose of an Appeal

22. The Co-Prosecutors consider that the length of the judgment justifies a significant extension of the time limit for the notices of appeal. The Co-Prosecutors believe that all parties and the Supreme Court Chamber benefit when parties comply with the requirements of the Internal Rules and clearly specify each legal or factual error that they seek to challenge.⁵³ Unfortunately, in the Case 002/01 appeal, this was not the case with the notice of appeal filed by Khieu Samphan,⁵⁴ which failed to properly identify individual factual and legal errors. The Co-Prosecutors submit that an extension of the time period to file notices of appeal from 30 days to 75 days is justified and that the existing limit of 30 pages⁵⁵ should allow all parties to clearly identify the alleged errors they challenge. However, the Co-Prosecutors submit that the time and page limit extensions requested by Nuon Chea and Khieu Samphan are patently excessive and would unnecessarily delay the proceedings.

IV. REQUESTED RELIEF

23. Based on the foregoing, the Co-Prosecutors respectfully request the Supreme Court Chamber to: (i) deny the Nuon Chea and Khieu Samphan requests for additional time and pages; and (ii) grant the Parties 45 additional days (75 in total) to file their respective notices of appeal within the 30-page limit provided for in the ECCC Practice Direction on the Filing of Documents.

Respectfully submitted,

Date	Name	Place	Signature
11 April 2019	CHEA Leang Co-Prosecutor	Phnom Penh	
	Nicholas KOUMJIAN Co-Prosecutor		

⁵³ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (rev. 16 January 2015), rule 105(3).

⁵⁴ See, e.g., **F18/3** Decision on Co-Prosecutors' Requests Relating to Khieu Samphan's Appeal Brief, 16 January 2015, p. 4, where the Supreme Court Chamber noted that the Khieu Samphan Defence "omits to correlate a conspicuous number of paragraphs in its appeal brief to corresponding grounds of appeal in its notice of appeal, and yet some of these arguments appear to be covered by some grounds of appeal".

⁵⁵ ECCC Practice Direction on the Filing of Documents, article 5(1).